

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 13-CR-1380 WJ

ANNA MONTANO-SALAS and MIGUEL SALAS,

Defendant.

MEMORANDUM OPINION AND ORDER RULING ON MOTIONS

THIS MATTER comes before the Court following a hearing Monday, September 16, 2013 at which the Court ruled on these motions:

- Defendant's motion in limine seeking to exclude Defendant's statements as inadmissible hearsay, filed 9/4/13 (**Doc. 57**);
- Government's motion in limine to exclude Defendant's self-serving declarations as inadmissible hearsay, filed 9/12/13 (**Doc. 65**).


I. Defendant's motion in limine seeking to exclude Defendant's statements as inadmissible hearsay, filed 9/4/13 (Doc. 57)

In this motion, the Defendant seeks to exclude Defendant's statements as inadmissible hearsay, stating it is not a statement by a party opponent. The Court applied the test used in *United States v. Romo-Chavez*, 681 F.3d 955 (9th Cir. 2012) to the Spanish language interpreters who prepared the transcripts based on the recorded interview. Based on weighing the factors of the test, Defendant's motion was DENIED.

II. Government's motion in limine to exclude Defendant's self-serving declarations as inadmissible hearsay, filed 9/12/13 (Doc. 65)

The Government moved to exclude Defendant's self-serving declarations as inadmissible hearsay. The Court GRANTED the motion to the extent that Defendant's out of court statements are self-serving, citing *United States v. Kimball*, 15 F.3d 54 (5th Cir. 1994), *cert. denied*, 115 S. Ct. 507 (1994). *Kimball* states that a defendant who has decided not to testify does not qualify as an unavailable declarant because the declarant may not create his own condition of unavailability and then benefit from it.

SO ORDERED.



UNITED STATES DISTRICT JUDGE